

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DEBRA B.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D045471

(San Diego County
Super. Ct. No. SJ10160)

Proceedings in mandate after reference to a Welfare and Institutions Code Section 366.26 hearing. Susan Huegenor, Judge. Petition denied.

Debra B. (the mother) seeks review of true findings and dispositional orders on petitions filed under Welfare and Institutions Code section 300, subdivision (a)¹ and on

¹ All statutory references are to the Welfare and Institutions Code.

orders that denied reunification services and set a section 366.26 hearing regarding two of her children. She contends the juvenile court erred in finding the allegations of the petitions true and in denying her reunification services. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On June 25, 2004, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of five-year-old Rachel J. and four-year-old Bridgete J. under section 300, subdivision (a), alleging they were at risk of physical harm in that in 1996 the mother had subjected their sibling, Rebecca J., to excessive discipline, and another sibling, A.J., was found to have a broken rib. The petition further alleged Rachel, Rebecca and A.J. had been dependents of the court, the mother did not participate in services, lost custody and was ordered to have no contact with the children. It also alleged that in August 2003 the mother was hospitalized because she was paranoid, schizophrenic and delusional and tried to set Bridgete down on broken glass. It further alleged that on June 23, 2004, the mother screamed at a social worker, requiring that hospital security be called, and the maternal grandmother (the grandmother) had not obtained legal guardianship of Rachel and Bridgete as promised and was unwilling to allow access to the children or disclose if the mother had contact with them.

The social worker reported the mother has a history of having severe psychological problems and has been diagnosed with paranoid schizophrenia. Rachel and Bridgete were living with the grandmother. The grandmother was not cooperative and had not allowed the previous social worker to see them. She said the mother came by occasionally, but she was not concerned that she would take the girls.

The mother's fifth child, Tiffany B., was born in June 2004. She is not a subject of this writ petition. Hospital staff reported Tiffany's father, Jared B., came to the hospital drunk, he and the mother argued and he threw things at her while she was in labor. At the hospital, the mother yelled and refused to cooperate with the social worker. She said her older children were removed wrongfully after Rebecca accidentally called 911. The mother would not give her address and said staff members, a social worker and security guards had attacked her.

On June 25, 2004, the court found a prima facie showing had been made on the petitions and ordered the children detained.

Rachel said the mother and Tiffany's father drank every night. She and Bridgete described the fights, saying the father kicked and pinched the mother's stomach when she was pregnant. They said he and the mother hit them with a belt and with their hands over their clothing. Tiffany's father said he and the mother have physical fights, once she caused an injury to him that required 27 stitches and another time she tried to run over him with a car. A maternal aunt, V.A., (the aunt), said she was concerned about Rachel's and Bridgete's mental health. She said they speak about the violence they have witnessed and talk to themselves.

The psychologist who evaluated the mother in 1996 said she was "extremely impatient and explosive in her behavior" and had a "paranoid tendency to be suspicious and distrustful of others and to project blame for her problems onto others while denying or minimizing her own responsibility." During the earlier dependencies, the mother yelled at social workers and staff and had to be taken to mental health facilities. She had

been offered services during those dependencies. She completed a psychological evaluation and went to three therapy sessions, but then stopped, saying she did not need therapy.

In an addendum report dated November 3, 2004, the social worker reported the mother had had a new psychological evaluation and began attending therapy. The psychologist who conducted the evaluation said the mother was guarded, did not recognize that she had emotional problems or had done anything wrong, and believed she had been victimized. A letter from the mother's therapist reported the mother was not amenable to therapy and was delusional and threatening. He declined to treat her and opined that she should be evaluated by a psychiatrist. The social worker reported the mother was arrested for domestic violence on October 30, 2004. She screamed at the police and resisted arrest. Police had been called to the home five times between June and October.

The jurisdictional and dispositional hearings were held on October 1 and November 30, 2004. On October 1 the court found the allegations of the petitions to be true based on the social worker's reports. The mother's parenting instructor testified the mother had completed a parenting course and participated on a regular basis.

When the court reconvened on November 30, the mother told the court she had been incarcerated because police battered and sexually assaulted her when they arrested her. The social worker testified he did not know if the mother had participated in an evaluation for medication. He said she resisted the Agency's attempts to provide mental

health services for her. The court denied services to the mother under section 361.5, subdivision (b)(3), (7), (10) and (11) and set the matter for a section 366.26 hearing.

The mother petitions for review of the court's orders. (§ 366.26, subd. (I); Cal. Rules of Court, rule 38.1.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

I

The mother contends the juvenile court erred in finding true the allegations of the petition under section 300, subdivision (a) and in denying reunification services. She argues the evidence did not show the children had recently suffered or were currently at risk of suffering serious physical harm from her.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Before a child may be removed from his or her parent, the court must find by clear and convincing evidence the child would be at substantial risk of harm if returned home and there are no reasonable means to protect the child short of removal. (§ 361,

subd. (c)(1).) The child need not have been actually harmed before removal. The focus is on averting harm. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

A child who comes within the following description is within the jurisdiction of the juvenile court, which may adjudge the child to be a dependent child under section 300, subdivision (a):

"The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury."

The mother argues there was no showing of a current risk to the children because there was evidence only that she and Tiffany's father hit them with a belt and with their hands over the children's clothes. The mother, however, has a long history of abusing her children. As the petition alleged, in the past she had harshly disciplined the girl's older sister, Rebecca, bruising her face, and the girls' brother, A.J., was found to have a healing rib fracture. The social worker reported that in 1998 during the dependencies of the older children, the mother was arrested and taken to mental health facilities several times for threatening social workers and for physically assaulting an Agency supervisor. She refused mental health treatment. Rachel and Bridgete said they saw the mother and Tiffany's father physically fight. Both girls said she hit them and Bridgete said she was afraid of the mother and hid in a closet to get away from her. In August 2003 the mother

was taken to mental health facilities. She had tried to set Bridgete down on broken glass and was found to be paranoid, schizophrenic and delusional. She left the facility against medical advice. Tiffany's father reported that he and the mother have physical fights. On October 30, 2004, he and the mother were involved in an incident of domestic violence and she was arrested. The record shows a risk of serious injury.

The mother also argues the children were not living with her, but with the grandmother, and there was no evidence the grandmother would not protect them. The children's reports, however, of watching domestic violence between the mother and Tiffany's father and being hit by them indicate they were present at the mother's home. Also, the social worker reported the grandmother was protective of the mother, rather than the children, in that she would not disclose Bridgete's and Rachel's whereabouts and she refused to discuss the mother's mental health condition. Although the grandmother had earlier agreed to become Rachel's and Bridgete's legal guardian she had not done so. The evidence supports a finding of a current risk of harm to Bridgete and Rachel under section 300, subdivision (a)

II

The mother contends the court erred in denying reunification services. It denied services under section 361.5, subdivision (b)(3), (7), (10) and (11). If substantial evidence supports denying services under any of these subsections, we will affirm the order denying services.

Section 361.5, subdivision (b)(3) provides reunification services need not be provided to a parent or guardian when the court finds by clear and convincing evidence

"[t]hat the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that child is being removed pursuant to Section 361, due to additional physical or sexual abuse."

Section 361.5, subdivision (b)(7) states that reunification services may be denied if the parent is not receiving reunification services for a sibling of the child under subdivision (b)(3), (5), or (6).

The factual circumstances here are not the same as those described in section 361.5, subdivision (b)(3) and (7). Before Rachel's birth, Rebecca and A.J. were removed from the mother's custody because of physical abuse. She did not reunify with them. Sometime after Rachel's birth, she was left with the grandmother, who did not have legal custody and was allowing the mother to have contact with her. Rachel was placed with her father, then some years later placed with the grandmother. The grandmother was allowing the mother to have access to Rachel and Bridgete and had not become their legal guardian as she had agreed to do. The girls were removed. These circumstances do not precisely match the situation described in section 361.5, subdivision (b)(3) and (7). However, substantial evidence clearly supports denying reunification services under section 361.5, subdivision (b)(10) and (11).

Section 361.5, subdivision (b)(10) provides services need not be offered when the court finds by clear and convincing evidence

"[t]hat the court ordered termination of reunification services for any siblings of the child because the parent or guardian failed to reunify with the sibling after the sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or of that child from that parent or guardian."

Section 361.5, subdivision (b)(11) provides services need not be offered when the court finds by clear and convincing evidence

"[t]hat the parental rights of a parent over any sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent."

The mother did not reunify with the girls' older siblings. Rebecca was placed with her father and A.J. was freed for adoption. The mother has not subsequently made reasonable efforts to treat the problems that led to their removal. Her parenting instructor testified she had completed a parenting course and had participated and gained from the class and from keeping an anger management journal. The mother's mental illness remained untreated, however. She was not undergoing individual therapy. Her therapist reported that during the few sessions they had together she became belligerent and threatening. He would not continue to treat her and said she was not amenable to therapy and should be evaluated by a psychiatrist.

The mother did not participate in services during the dependencies of her older children. Her current mental health problems are untreated. The record supports the court's decision to deny services.

DISPOSITION

The petition is denied.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.